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HAND-BOOK FOR

NATIONAL BANK SHAREHOLDERS.

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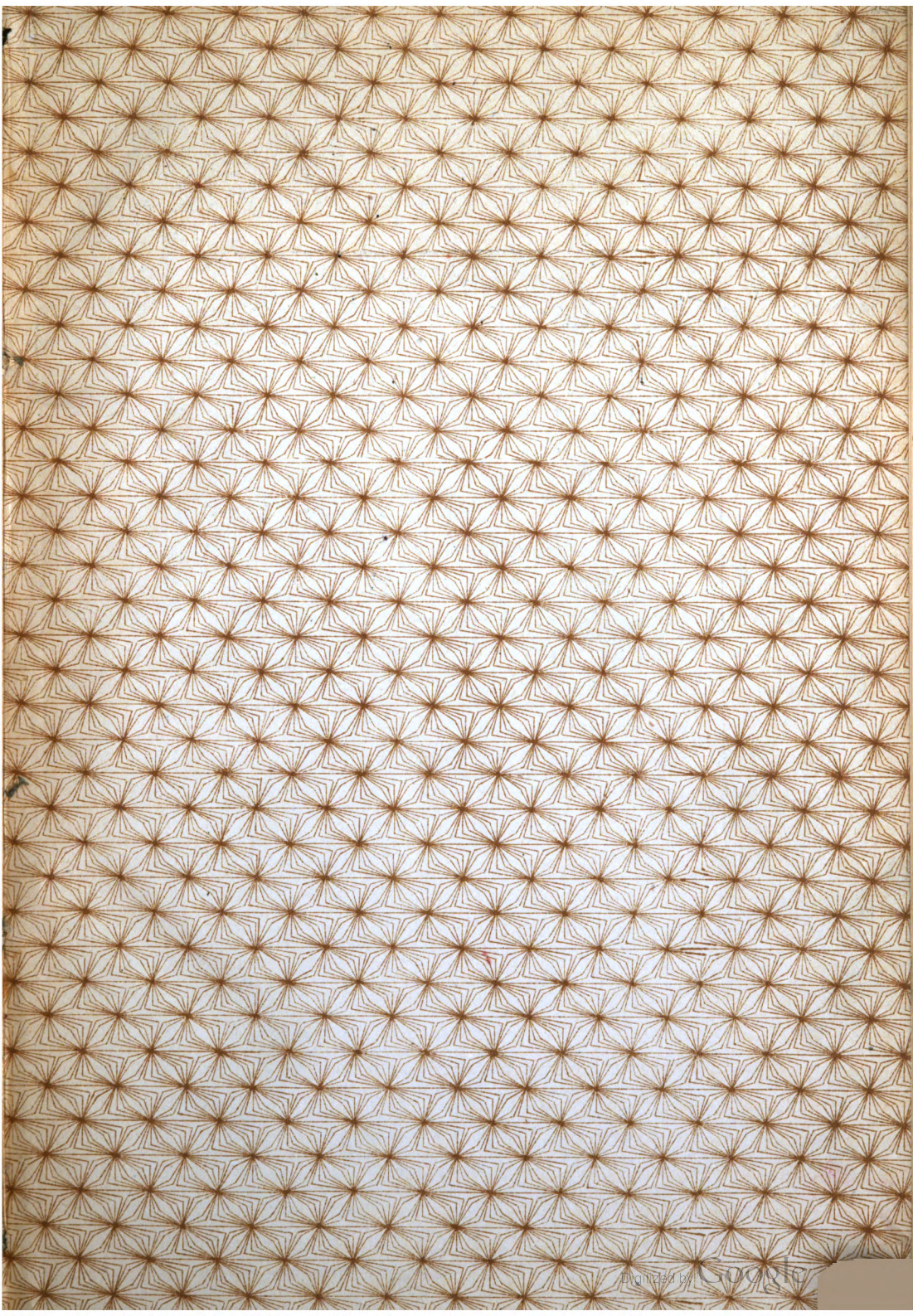


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FOR

NATIONAL BANK SHAREHOLDERS.

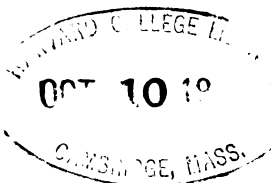
THEIR LEGAL RIGHTS AND
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BY
GEO. M. COFFIN,
AUTHOR OF
"Hand-Book for Bank Officers."

WASHINGTON, D. C.:
H. L. McQUEEN, Publisher,
1891.

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Prof. F. W. Taussig

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PREFACE.

IT is hoped that this little volume will be found useful to a large number of persons who, in various ways, are interested in National banking associations, and especially to those who own shares of stock in these banks.

It contains the text of all portions of the National Bank Act which relate in any way to the *rights and liabilities of shareholders*, with notes explanatory of each of these sections of the law.

In treating the various topics the method adopted in the "Hand-Book for Bank Officers," by the same author, has been followed, and special effort has been made to bring out the salient points of each subject and to present these in the plainest language.

As the conclusions reached in every case rest on the authority of usage and of legal decisions rendered on various disputed points, it is believed that the work will be found reliable and valuable.

The information it contains will be found specially useful to persons proposing to organize National banking associations.

January, 1891.

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HAND-BOOK

FOR

NATIONAL BANK SHAREHOLDERS.

CHAPTER I.

ORGANIZATION AND POWERS OF NATIONAL BANKS.

SEC. 5133. Associations for carrying on the business of banking under this Title may be formed by any number of natural persons, not less in any case than five. They shall enter into articles of association, which shall specify in general terms the object for which the association is formed, and may contain any other provisions, not inconsistent with law, which the association may see fit to adopt for the regulation of its business and the conduct of its affairs. These articles shall be signed by the persons uniting to form the association, and a copy of them shall be forwarded to the Comptroller of the Currency, to be filed and preserved in his office.

SEC. 5134. The persons uniting to form such an association shall, under their hands, make an organization certificate, which shall specifically state:

First. The name assumed by such association; which

name shall be subject to the approval of the Comptroller of the Currency.

Second. The place where its operations of discount and deposit are to be carried on, designating the State, Territory, or district, and the particular county and city, town, or village.

Third. The amount of capital stock and the number of shares into which the same is to be divided.

Fourth. The names and places of residence of the shareholders and the number of shares held by each of them.

Fifth. The fact that the certificate is made to enable such persons to avail themselves of the advantages of this Title.

SEC. 5135. The organization certificate shall be acknowledged before a judge of some court of record, or notary public, and shall be, together with the acknowledgment thereof, authenticated by the seal of such court, or notary, transmitted to the Comptroller of the Currency, who shall record and carefully preserve the same in his office.

These sections which provide for the taking of the first steps in the organization of a National banking association prescribe that not less than *five* persons may unite to form it, and that those who do so unite must be "natural" persons. This term means that they must be individuals (as distinguished from associated *groups* of individuals, such as firms, companies, or corporations), and such individuals as have the legal right, under the laws of the State where the bank is to be located, to hold property in their own names. Whether a woman, married or single, may be one of the organizers of

a National bank will depend, therefore, upon her legal status as a "natural" person under the laws of the State where the bank is organized. The right of a woman to hold stock in the bank after it has been organized will also depend upon the same circumstances.

All the information necessary for procedure under these sections may be obtained by applying in person or by letter to the Comptroller of the Currency, at Washington, D. C., who will also furnish printed blanks for the "articles of association" and "organization certificate" herein required. Copies of these forms are to be found on pages 38 and 40 of this volume.

Both of these papers must be signed by the same persons identically, and the "organization certificate," after being signed, must be executed strictly in accordance with the requirements of section 5135. While the law prescribes that the *names* of all shareholders shall be given in the "organization certificate," their *signatures* are not required in this paper.

SEC. 5136. Upon duly making and filing articles of association and an organization certificate, the association shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name

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designated in the organization certificate, it shall have power—

First. To adopt and use a corporate seal.

Second. To have succession for the period of twenty years from its organization, unless it is sooner dissolved according to the provisions of its articles of association, or by the act of its shareholders owning two-thirds of its stock, or unless its franchise becomes forfeited by some violation of law.

Third. To make contracts.

Fourth. To sue and be sued, complain and defend, in any court of law and [or] equity, as fully as natural persons.

Fifth. To elect or appoint directors, and by its board of directors to appoint a president, vice-president, cashier, and other officers, define their duties, require bonds of them and fix the penalty thereof, dismiss such officers or any of them at pleasure, and appoint others to fill their places.

Sixth. To prescribe, by its board of directors, by-laws not inconsistent with law, regulating the manner in which its stock shall be transferred, its directors elected or appointed, its officers appointed, its property transferred, its general business conducted, and the privileges granted to it by law exercised and enjoyed.

Seventh. To exercise by its board of directors, or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of this Title.

But no association shall transact any business except such as is incidental and necessarily preliminary to its organiza-

tion, until it has been authorized by the Comptroller of the Currency to commence the business of banking.

SEC. 5137. A National banking association may purchase, hold, and convey real estate for the following purposes, and for no others:

First. Such as shall be necessary for its immediate accommodation in the transaction of its business.

Second. Such as shall be mortgaged to it in good faith by way of security for debts previously contracted.

Third. Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

Fourth. Such as it shall purchase at sales under judgments, decrees, or mortgages held by the association, or shall purchase to secure debts due to it.

But no such association shall hold the possession of any real estate under mortgage, or the title and possession of any real estate purchased to secure any debts due to it, for a longer period than five years.

While these sections have no direct bearing upon the rights or liabilities of shareholders individually, they have been included here because they define, in general terms, what are the powers of a National banking association in its corporate capacity, and for this reason should interest all shareholders in such associations.

SEC. 5138. No association shall be organized under this Title with a less capital than one hundred thousand dollars; except that banks with a capital of not less than fifty thousand dollars may, with the approval of the Secretary of the Treasury, be organized in any place the population of which does not exceed six thousand inhabitants. No association

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shall be organized in a city the population of which exceeds fifty thousand persons with a less capital than two hundred thousand dollars.

From this it will be seen that the *minimum* capital stock required of each National bank is based upon the *population* of the place in which it is located at date of its organization, as follows:

1. \$50,000 for a bank organized in a place having 6,000 inhabitants *or less*.
2. \$100,000 for a bank organized in a city having *over* 6,000, but *not more than* 50,000 inhabitants.
3. \$200,000 for a bank organized in a city having *over* 50,000 inhabitants.

As related to this subject, also, the *minimum* bond-deposit requirements for these banks under existing law are as follows:

1. Banks with capital ranging from \$50,000 to \$150,000, inclusive, must deposit U. S. bonds equal in *par value* to *one-fourth* of their capital. (See sec. 8, act July 12, 1882.)
2. Banks having more than \$150,000 each need not deposit more than \$50,000 (par value) of U. S. bonds. (See sec. 4, act June 20, 1874.)

SEC. 5139. The capital stock of each association shall be divided into shares of one hundred dollars each, and be

deemed personal property, and transferable on the books of the association in such manner as may be prescribed in the by-laws or articles of association. Every person becoming a shareholder by such transfer shall, in proportion to his shares, succeed to all the rights and liabilities of the prior holder of such shares; and no change shall be made in the articles of association by which the rights, remedies, or security of the existing creditors of the association shall be impaired.

By this section shares of stock in National banks are distinctly given the legal status of "personal property," and this being the case the owner of any such shares has the same right to dispose of his shares as he has to dispose of other personal property, provided he does so in good faith, and not for the purpose of fraudulently evading the liability which attaches to the stock.

When disposed of in good faith it is only necessary that he should see that his shares are transferred on the books of the bank "in such manner as may be prescribed in the by-laws or articles of association," for this is plainly required by law. The courts have decided that the purpose of this requirement is the translation of the title from one owner to another, and is for the protection of all parties concerned, and also to enable the bank to know who are its actual shareholders. It has also

been decided, however, that this section does not give the association any preferred lien on the shares of a stockholder indebted to it, and that the association has no right, therefore, to refuse to transfer the shares of a stockholder who is indebted to it, and that any restriction of this kind which may be attached to any certificate of stock is void and without effect. In other words, as between the bank and the shareholder, the bank in proceeding to recover a debt from its shareholder has the same rights in respect to his stock as any other party under the same circumstances, but no more. See the following decisions on these points: *Johnson vs. Laffin*, 103 U. S., 800; *Bullard vs. Nat. Bank*, 18 Wall., 589; *Bank vs. Lanier*, 11 Wall., 369.

SEC. 5140. At least fifty per centum of the capital stock of every association shall be paid in before it shall be authorized to commence business; and the remainder of the capital stock of such association shall be paid in installments of at least ten per centum each, on the whole amount of the capital, as frequently as one installment at the end of each succeeding month from the time it shall be authorized by the Comptroller of the Currency to commence business; and the payment of each installment shall be certified to the Comptroller, under oath, by the president or cashier of the association.

SEC. 5141. Whenever any shareholder, or his assignee, fails to pay any installment on the stock when the same is

required by the preceding section to be paid, the directors of such association may sell the stock of such delinquent shareholder at public auction, having given three weeks' previous notice thereof in a newspaper published and of general circulation in the city or county where the association is located, or, if no newspaper is published in said city or county, then in a newspaper published nearest thereto, to any person who will pay the highest price therefor, to be not less than the amount then due thereon, with the expenses of advertisement and sale; and the excess, if any, shall be paid to the delinquent shareholder. If no bidder can be found who will pay for such stock the amount due thereon to the association, and the cost of advertisement and sale, the amount previously paid shall be forfeited to the association, and such stock shall be sold as the directors may order, within six months from the time of such forfeiture, and if not sold it shall be canceled and deducted from the capital stock of the association. If any such cancellation and reduction shall reduce the capital of the association below the minimum of capital required by law, the capital stock shall, within thirty days from the date of such cancellation, be increased to the required amount; in default of which a receiver may be appointed, according to the provisions of section fifty-two hundred and thirty-four, to close up the business of the association.

These sections provide how the capital stock must be paid in when the bank is organized, and prescribe the course to be pursued by the directors when shareholders fail to pay in their installments at the proper time. It may be noted that while the letter of the law requires only that installments

equal *in the aggregate* to the proportions required should be paid in at the appointed periods (which may be accomplished if the prepayments of some shareholders offset the arrears of others), the *intent* of the law appears to be that each shareholder should pay in at least the minimum proportion of his subscription at the periods stated.

It is evident from the use of the words "paid in," in section 5140, that it was contemplated by the framers of the law that the capital stock should be paid in money, or the equivalent of money, and the law in this respect is not complied with, therefore, when the promissory notes of shareholders are accepted from them in payment of their subscriptions to stock.

SEC. 5142. Any association formed under this Title may, by its articles of association, provide for an increase of its capital from time to time, as may be deemed expedient, subject to the limitations of this Title. But the maximum of such increase to be provided in the articles of association shall be determined by the Comptroller of the Currency; and no increase of capital shall be valid until the whole amount of such increase is paid in, and notice thereof has been transmitted to the Comptroller of the Currency, and his certificate obtained, specifying the amount of such increase of capital stock, with his approval thereof, and that it has been duly paid in as part of the capital of such association.

Sections 1 and 2 of an Act to enable National banking associations to increase their capital stock and to change their names or location, approved May 1, 1886.

SEC. 1. That any National banking association may, with the approval of the Comptroller of the Currency, by the vote of shareholders owning two-thirds of the stock of such association, increase its capital stock, in accordance with existing laws, to any sum approved by the said Comptroller, notwithstanding the limit fixed in its original articles of association and determined by said Comptroller; and no increase of the capital stock of any National banking association, either within or beyond the limit fixed in its original articles of association, shall be made except in the manner herein provided.

SEC. 2. That any National banking association may change its name or the place where its operations of discount and deposit are to be carried on, to any other place within the same State, not more than thirty miles distant, with the approval of the Comptroller of the Currency, by the vote of shareholders owning two-thirds of the stock of such association. A duly authenticated notice of the vote and of the new name or location selected shall be sent to the office of the Comptroller of the Currency; but no change of name or location shall be valid until the Comptroller shall have issued his certificate of approval of the same.

Section 5142 originally provided that any contemplated increase of capital stock should be provided for in the bank's original articles of association, the maximum of such increase being determined by the Comptroller at the time of its organization. This provision was amended, however, by section 1, act May 1, 1886, quoted above, which pro-

vides instead that a National bank may at any time determine by a vote of the shareholders owning two-thirds of the shares to increase its capital to any amount of which the Comptroller would approve.

No increase of capital is valid, however, until the bank, having notified the Comptroller that the entire amount has been paid in, obtains his certificate as to the amount of the increase, with his approval thereof. In other words, the increase has not the legal status of "capital stock" for the purposes of taxation, etc.; until the Comptroller's certificate is issued.

It will be noted, here and elsewhere, where a vote of shareholders is required on any question, that the law is silent on the subject of requiring *notice* to be given to shareholders, except in cases where the annual election of directors is postponed beyond the regular date. (See section 5149.) With regard to notice of meetings, section 8 of the form of "articles of association" (on page 40), providing for the change or amendment of the articles, provides that—

"The board of directors, or any three shareholders, may call a meeting of the shareholders for this or any other purpose, not inconsistent with law, by publishing notice thereof

for thirty days in a newspaper published in the town, city, or county where the bank is located, or by mailing to each shareholder notice in writing thirty days before the time fixed for the meeting.

In case, however, the "articles of association" of the bank do not contain the provision quoted, it has been held that as a common law right shareholders are entitled to receive such notice of meetings, and, as a bank frequently has non-resident shareholders who would not probably observe an advertisement in the local newspaper, it is better to send all the shareholders notice in writing, also, either by mail or other proper means. The notice given in such cases should invariably state the *place* where, and the exact *time* when, the meeting is to be held, and the *purpose* or *purposes* for which it is called. The articles of association usually provide that each shareholder has the privilege of subscribing to any increase of capital in the proportion that his holding bears to the total capital before the increase is made, but in the absence of any such provision in the articles of association, the shareholders would probably be entitled to this privilege under common-law requirements applying to other corporations.

Section 2, act May 1, 1886, above quoted, also

provides that a change of the name of the bank or of its location, within certain limitations, may, with the approval of the Comptroller, be determined by a vote of shareholders owning two-thirds of the stock.

SEC. 5143. Any association formed under this Title may, by the vote of shareholders owning two-thirds of its capital stock, reduce its capital to any sum not below the amount required by this Title to authorize the formation of associations; but no such reduction shall be allowable which will reduce the capital of the association below the amount required for its outstanding circulation, nor shall any such reduction be made until the amount of the proposed reduction has been reported to the Comptroller of the Currency and his approval thereof obtained.

Any reduction in capital stock, like any increase, is subject to the approval of the Comptroller, and requires a vote of shareholders owning two-thirds of the stock, shareholders being entitled to proper notice. (See remarks under section 5142, on page 12, with regard to notice.) It has been decided that any reduction in capital stock belongs to the shareholders, *pro rata*, and must be returned to them, and can not be retained as a surplus by the association.

SEC. 5144. In all elections of directors, and in deciding all questions at meetings of shareholders, each shareholder shall be entitled to one vote on each share of stock held by him.

Shareholders may vote by proxies duly authorized in writing; but no officer, clerk, teller or book-keeper of such association shall act as proxy; and no shareholder whose liability is past due and unpaid shall be allowed to vote.

At all meetings of shareholders each share of stock counts as one vote. As the National Bank Act makes no provision for *cumulative* voting, this method of electing directors is not regarded as lawful. The prohibition that no "officer" shall act as proxy for an absent shareholder applies to directors also, inasmuch as it is clear from the concluding paragraph of section 5240 that a director is an "officer" within the meaning of the National Bank Act. (See form for proxy on page 41.)

The "liability" of the shareholder referred to in this section has been held to apply to his liability for unpaid subscriptions of stock only. (See *United States ex rel. vs. Barry*, 36 Fed. Rep., 346.)

The law does not in terms define what number of shares constitutes a *quorum* at meetings called to elect directors or to decide questions other than those requiring the assent of two-thirds of the whole number of shares, but it may be safely held that if a bare majority of the whole number of shares is present—one more than half, for instance—such majority is legally competent to transact business

at such meetings. Some of the courts have decided that at meetings of this kind a *minority* of the whole number of shares may lawfully transact business, but the presence of a majority would leave no question of doubt on this point.

SEC. 5145. The affairs of each association shall be managed by not less than five directors, who shall be elected by the shareholders at a meeting to be held at any time before the association is authorized by the Comptroller of the Currency to commence the business of banking; and afterward at meetings to be held on such day in January of each year as is specified therefor in the articles of association. The directors shall hold office for one year, and until their successors are elected and have qualified.

SEC. 5146. Every director must, during his whole term of service, be a citizen of the United States, and at least three-fourths of the directors must have resided in the State, Territory, or district in which the association is located for at least one year immediately preceding their election and must be residents therein during their continuance in office. Every director must own, in his own right, at least ten shares of the capital stock of the association of which he is a director. Any director who ceases to be the owner of ten shares of the stock, or who becomes in any other manner disqualified, shall thereby vacate his place.

SEC. 5149. If, from any cause, an election of directors is not made at the time appointed, the association shall not for that cause be dissolved, but an election may be held on any subsequent day, thirty days' notice thereof in all cases having been given in a newspaper published in the city, town or county in which the association is located; and if no newspaper is published in such city, town or county, such notice

shall be published in a newspaper published nearest thereto. If the articles of association do not fix the day on which the election shall be held, or if no election is held on the day fixed, the day for the election shall be designated by the board of directors in their by-laws, or otherwise; or if the directors fail to fix the day, shareholders representing two-thirds of the shares may do so.

These sections prescribe how and when directors are to be chosen; that every director must be a shareholder owning in his own right not less than ten (10) shares of stock and a citizen of the United States; that no bank shall have less than five directors, and that at least three-fourths of the number elected must have been residents in the State, Territory or district where the bank is located for at least one year before their election and must continue to be residents therein so long as they hold the office. As the law provides that directors chosen at the regular annual meeting shall hold their offices for one year or until the shareholders elect their successors at the next regular election (unless meanwhile they disqualify themselves by some act contrary to law) the number of directors can not be reduced or increased by vote of the shareholders at any time between these periods or before the next regular election. Before this can be done, moreover, the articles of association,

which always fix the number of directors, must first be amended by a vote of the shareholders owning two-thirds of the stock.

SEC. 5151. The shareholders of every National banking association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such association, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares; except that shareholders of any banking association now existing under State laws, having not less than five millions of dollars of capital actually paid in, and a surplus of twenty per centum on hand, both to be determined by the Comptroller of the Currency, shall be liable only to the amount invested in their shares; and such surplus of twenty per centum shall be kept undiminished, and be in addition to the surplus provided for in this Title; and if at any time there is a deficiency in such surplus of twenty per centum, such association shall not pay any dividends to its shareholders until the deficiency is made good; and in case of such deficiency, the Comptroller of the Currency may compel the association to close its business and wind up its affairs under the provisions of chapter four of this Title.

SEC. 5152. Persons holding stock as executors, administrators, guardians, or trustees, shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward, or person interested in such trust-funds would be, if living and competent to act and hold the stock in his own name.

The *extent* of liability under these sections is measured in this way: If a shareholder owns one

: bank be-
 : invested
 : assessed
 : so much
 : ors of the
 : s liability,

and it can not be exceeded even though other shareholders fail to pay their proportion of the loss assessed against them. The "contracts, debts, and engagements" of an association for which shareholders are liable are held to be those only which have been contracted by the bank in the ordinary course of its business.

The liability which attaches to shares in National banks should cause the owners of such shares to be very careful to see that their liability is legally terminated by the proper transfer of such shares, when sold, to the purchaser, on the books of the bank "in such manner as may be prescribed in the by-laws or articles of association," for unless this is done the liability still attaches to the original holder, and, in case disaster afterwards overtakes the bank, may involve him in loss, or his estate after his death. (See remarks under section 5139, page 7.) The courts have decided that the real owner of stock is liable on same, though it may stand

in the name of some other person on the books of the bank; and where a shareholder, aware of the insolvency of the bank, transfers his shares for the purpose of avoiding liability, such transfer is void though made "out and out" or without consideration to an irresponsible person. Executors, administrators, guardians, or trustees should also be careful to see that the names of the estates, persons, or trusts for which they subscribe are fully disclosed to the bank, for unless this is done they may, under certain circumstances, incur personal liability.

See the following U. S. Supreme Court decisions: *United States vs. Knox*, 102 U. S., 422; *Richmond vs. Irons*, 121 U. S., 27; *National Bank vs. Case*, 99 U. S., 628; *Bowden vs. Johnson*, 107 U. S., 251.

CHAPTER II.

REGULATION OF THE BANKING BUSINESS.

SEC. 5201. No association shall make any loan or discount on the security of the shares of its own capital stock, nor be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith; and stock so purchased or acquired shall, within six months from the time of its purchase, be sold or disposed of at public or private sale; or, in default thereof, a receiver may be appointed to close up the business of the association, according to section fifty-two hundred and thirty-four.

This section makes it unlawful for a National bank to loan money on, or purchase, any shares of its own stock, except to save itself from loss on a debt previously contracted in good faith, and even then the bank can not lawfully hold it longer than six months from the time of acquirement, when it is compelled to sell it under penalty of being placed in the hands of a receiver if it fails to dispose of the stock. If the courts had not already decided on this point it seems that this section would operate to deny to an association any preferred lien on its shares for loans made to the shareholder, for

this would amount to loaning money on the security of its own stock.

SEC. 5205. Every association which shall have failed to pay up its capital stock, as required by law, and every association whose capital stock shall have become impaired by losses or otherwise, shall, within three months after receiving notice thereof from the Comptroller of the Currency, pay the deficiency in the capital stock, by assessment upon the shareholders *pro rata* for the amount of capital stock held by each; and the Treasurer of the United States shall withhold the interest upon all bonds held by him in trust for any such association, upon notification from the Comptroller of the Currency, until otherwise notified by him. If any such association shall fail to pay up its capital stock, and shall refuse to go into liquidation, as provided by law, for three months after receiving notice from the Comptroller, a receiver may be appointed to close up the business of the association, according to the provisions of section fifty-two hundred and thirty-four.

SEC. 4, act June 30, 1876. That the last clause of section fifty-two hundred and five of said statutes is hereby amended by adding to the said section the following proviso:

"And provided, That if any shareholder or shareholders of such bank shall neglect or refuse, after three months' notice, to pay the assessment, as provided in this section, it shall be the duty of the board of directors to cause a sufficient amount of the capital stock of such shareholder or shareholders to be sold at public auction (after thirty days' notice shall be given by posting such notice of sale in the office of the bank, and by publishing such notice in a newspaper of the city or town in which the bank is located, or in a newspaper published nearest thereto), to make good the deficiency; and the balance, if any, shall be returned to such delinquent shareholder or shareholders."

A National bank, the capital of which is impaired, is here required, upon receiving proper notice from the Comptroller, to levy an assessment upon its shareholders for such an amount as he may decide to be necessary to make good the impairment. If at the end of three months from the time the Comptroller gives notice any shareholder fails to pay in his assessment, the law makes it the duty of the board of directors to sell so much of his stock as may be necessary to satisfy the assessment, and prescribes how the stock should be sold.

SEC. 5210. The president and cashier of every National banking association shall cause to be kept at all times a full and correct list of the names and residences of all the shareholders in the association, and the number of shares held by each, in the office where its business is transacted. Such list shall be subject to the inspection of all the shareholders and creditors of the association, and the officers authorized to assess taxes under State authority, during business hours of each day in which business may be legally transacted. A copy of such list, on the first Monday of July of each year, verified by the oath of such president or cashier, shall be transmitted to the Comptroller of the Currency.

It will be observed that the list of shareholders herein required to be kept by the bank is subject to the inspection of any shareholder during the business hours of any legal business day. This

provision of law is manifestly in the interest of the bank's creditors and of the shareholders also, who are thus enabled to inform themselves as to the character and responsibility of their associates, whom they would be able to reach through this channel, if under certain circumstances organized action by the shareholders became necessary.

SEC. 5219. Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the association is located; but the legislature of each State may determine and direct the manner and place of taxing all the shares of National banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any National banking association owned by non-residents of any State shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed.

By this section it is distinctly declared that, for purposes of State taxation, shares of stock in National banks shall be treated as personal property, subject to be taxed in such manner and place as the legislature of each State may determine and

direct; with these restrictions, however, "that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any National banking association owned by non-residents of any State shall be taxed in the city or town where the bank is located, and not elsewhere." The aim of this section, while it clearly concedes to each State the right to tax the shares of National banks located therein, is to protect shareholders from any discrimination against these banks and in favor of moneyed capital invested in State banks or other enterprises located in the same State. It has been decided that, while the shares in these banks may be taxed by each State, the banks themselves can not be subjected to a license or privilege tax.

On this subject of taxation each annual report of the Comptroller contains a very full and interesting digest of legal decisions. Included in this digest are references to the following U. S. Supreme Court decisions: *Van Allen vs. The Assessors*, 3 Wall., 573; *Bank of Redemption vs. Boston*, 126 U. S., 60; *Bradley vs. The People*, 4 Wall., 459; *Lionberger vs. Rouse*, 9 Wall., 468; *Pelton vs. Commercial National Bank*, 101 U. S., 143; *Hep-*

burn *vs.* School Directors, 23 Wall., 480; People *vs.* The Commissioners of Taxes and Assessments, 94 U. S., 415; Davenport Bank *vs.* Davenport, 123 U. S., 83; Boyer *vs.* Boyer, 113 U. S., 690; People *ex rel* Williams *vs.* Weaver, 100 U. S., 539; Mercantile Bank *vs.* New York, 121 U. S., 138; National Bank *vs.* Commonwealth, 9 Wall., 353; Waite *vs.* Dowley, 94 U. S., 527; People *vs.* The Commissioners, 4 Wall., 244.

CHAPTER III.

DISSOLUTION AND RECEIVERSHIP.

SEC. 5220. Any association may go into liquidation and be closed by the vote of its shareholders owning two-thirds of its stock.

This section, in prescribing the mode of procedure for placing an association in voluntary liquidation, requires, as in the case of an increase or reduction of capital stock, a "vote of its shareholders owning two-thirds of its stock." In the absence of any statutory requirements as to notice, shareholders are entitled to receive the usual thirty days' notice required for other meetings of shareholders. (See page 12). Although the formal approval of the Comptroller is not prescribed here, as in the case of reduction or increase of capital stock, it is customary to obtain this, and should liquidation proceedings be undertaken by the shareholders of an insolvent bank without his approval, he would have the power to estop such proceedings under section 1, act June 30, 1876, which prescribes that when the Comptroller shall become satisfied of the

insolvency of any association he may, after due examination of its affairs, appoint a receiver to close up its affairs.

The course of procedure by which the liability of the shareholders of an association which has gone into voluntary liquidation may be enforced in the courts by any creditor of such association is provided by section 2, act June 30, 1876, and section 3 of this act also provides for the election of an agent for shareholders—in the case of a bank which has been in the hands of receiver and paid all of its creditors—to receive from the Comptroller and receiver such assets as still remain, and distribute same to the shareholders.

SEC. 5239. If the directors of any National banking association shall knowingly violate, or knowingly permit any of the officers, agents, or servants of the association to violate any of the provisions of this title, all the rights, privileges and franchises of the association shall be thereby forfeited. Such violation shall, however, be determined and adjudged by a proper circuit, district or territorial court of the United States, in a suit brought for that purpose by the Comptroller of the Currency, in his own name, before the association shall be declared dissolved. And in cases of such violation, every director who participated in or assented to the same shall be held liable in his personal and individual capacity for all damages which the association, its shareholders, or any other person shall have sustained in consequence of such violation.

This section provides that the franchises of an association may be forfeited for violations of law which the directors may knowingly commit, or knowingly permit the officers, agents or servants of the bank to commit. These violations, however, must be determined by the proper courts in a suit brought by the Comptroller, in his own name, before the franchises are forfeited.

By this section, also, where such violations of law are proven, every director who participated in or assented to same is made personally and individually liable for all damages sustained by the shareholders, or any other persons, as the result of such violations.

CHAPTER IV.

EXTENSION OF CORPORATE EXISTENCE OF BANK.

Extract from Act July 12, 1882 :

SEC. 2. That such amendment of said articles of association shall be authorized by the consent in writing of shareholders owning not less than two-thirds of the capital stock of the association; and the board of directors shall cause such consent to be certified under the seal of the association, by its president or cashier, to the Comptroller of the Currency, accompanied by an application made by the president or cashier for the approval of the amended articles of association by the Comptroller; and such amended articles of association shall not be valid until the Comptroller shall give to such association a certificate under his hand and seal that the association has complied with all the provisions required to be complied with, and is authorized to have succession for the extended period named in the amended articles of association.

This section provides that the amendment of the articles of association necessary to enable a bank to extend its corporate existence must be authorized *by the consent in writing* of shareholders owning not less than two-thirds of its capital stock. This provision was probably intended to obviate

the necessity for holding a meeting of shareholders to amend the "articles of association" in the usual way. The form upon upon which this "consent in writing" is given is furnished by the Comptroller. Shareholders residing at or near the place where the bank is located may sign this paper in person; those living at a distance are usually furnished with a "power of attorney," after the form appearing on page 42, which they must execute and forward to some person at the place where the bank is located—other than an officer of the bank—who is then empowered to sign in their stead.

SEC. 5. That when any National banking association has amended its articles of association as provided in this act, and the Comptroller has granted his certificate of approval, any shareholder not assenting to such amendment may give notice in writing to the directors, within thirty days from the date of the certificate of approval, of his desire to withdraw from said association, in which case he shall be entitled to receive from said banking association the value of the shares so held by him, to be ascertained by an appraisal made by a committee of three persons, one to be selected by such shareholder, one by the directors, and the third by the first two; and in case the value so fixed shall not be satisfactory to any such shareholder, he may appeal to the Comptroller of the Currency, who shall cause a reappraisal to be made, which shall be final and binding; and if said reappraisal shall exceed the value fixed by said committee, the bank shall pay the expenses of said reappraisal, and otherwise the appellant

shall pay said expenses; and the value so ascertained and determined shall be deemed to be a debt due, and be forthwith paid, to said shareholder, from said bank; and the shares so surrendered and appraised shall, after due notice, be sold at public sale, within thirty days after the final appraisal provided in this section: *Provided*, That in the organization of any banking association intended to replace any existing banking association, and retaining the name thereof, the holders of stock in the expiring association shall be entitled to preference in the allotment of the shares of the new association in proportion to the number of shares held by them respectively in the expiring association.

This section distinctly prescribes the manner in which any shareholder not assenting to the extension of the bank's charter is to be paid for his stock by the bank after the proper appraisal of its value has been made in the way provided by the section. An appeal to the Comptroller is also provided for in case the shareholder is not satisfied with the first appraisal. It also prescribes that if any new association is organized to take the place and retain the name of an expiring association the shareholders in the old bank shall be entitled to preference in taking shares in the new bank in the proportion of their respective holdings in the old bank to its capital stock.

CHAPTER V.

REMARKS ON RELATIONS BETWEEN SHAREHOLDERS AND DIRECTORS AND THEIR RESPECTIVE RIGHTS AND LIABILITIES.

Upon a general review of such portions of the National Bank Act as have been considered in this volume it will be found that the rights enjoyed by the shareholder in National banking associations in a measure are similar to, or correspond with, those of electors or voters under a republican form of government.

The unit of representation is the share—not the individual shareholder—each share counting as one vote at all shareholders' meetings. The directors, who are elected by these votes, are the direct representatives of the shareholders, and if not satisfactory to those holding a majority of the shares may be supplanted at any annual election by others chosen in their places. The law provides that directors chosen by shareholders at the regular annual election shall hold their offices for one year therefrom, and that in case the annual election is

not held at the usual time the directors continue to hold office beyond the period of a year and until their successors are elected by the shareholders, provided, of course, that meantime the directors commit no act which will legally disqualify them.

In case of resignation or disqualification of any director between annual elections, the law provides that the remaining directors may select or appoint some other shareholder—duly qualified—to serve out his term.

Necessarily, large powers are granted to these representatives—the directors—who are charged by law with the entire management of the bank's affairs, and consequently shareholders should exercise great care in the selection of those to whose integrity, ability and judgment the management of their interests are committed for the space of a year at least.

It is to the manifest interest of all concerned that any matter detrimental to the welfare of the bank should be promptly reported by shareholders to the directors, and to them also the shareholders should apply for such information regarding the bank's affairs as it may be proper and right for them to have.

In this connection it is to be noted that the Na-

tional Bank Act contains no provision anywhere authorizing a shareholder to examine the books, accounts and records of the bank, and the omission of such a provision appears to have been intentional and based upon sound reasons. If this privilege were granted to one shareholder it must necessarily be extended to all, without discrimination, with the possible result that a shareholder, with the best intentions but lacking discretion or the proper knowledge of figures and accounts, might by the use of information so acquired unwittingly inflict great damage upon the interests of all concerned.

In a recent decision by a State court (*Winter vs. Baldwin*, 7 So. Rep., 734) it was held that a provision in the laws of Alabama giving shareholders of corporations in that State the right to inspect books, records and papers applied also to National banks located there; but it is very questionable whether this view would be sustained by the Federal courts for the reasons given in the foregoing paragraph.

For the information of shareholders and the public generally, section 5211 requires every National bank to publish its reports of condition—made to the Comptroller five times each year, under oath of its president or cashier and attested

by three directors—in a newspaper published at or near the place where the bank is located; and every shareholder has also the legal right to inspect the list of shareholders in his or her own bank at any time during business hours. Beyond this the law does not entitle him to any information regarding the bank's affairs which the directors do not see fit to give him.

For any violations of law knowingly committed or permitted by the directors, section 5239 makes their bank liable to loss of its "rights, privileges and franchises"; but these violations can be determined only before the proper courts in suits brought by the Comptroller and by no one else. In case violations are proven in this way the directors then become personally and individually liable for any damages resulting to shareholders or others concerned. It would seem, then, that when a shareholder has positive knowledge of any unlawful act or acts committed by any director or other officer of his bank likely to result in loss or damage to the shareholders, he should first seek a remedy by bringing the matter to the attention of the board of directors, whose duty it is to see that the bank's affairs are conducted in conformity with law. Such a course would probably secure the result desired;

but, should it fail, it would seem that as a last resort the matter might be brought to the attention of the Comptroller, who, under the provisions of section 5240, has the power to investigate the affairs of any National bank when necessary, and who alone is competent to bring suit against the bank for violations of law.

Under certain circumstances shareholders may consider that the management of the bank is not favorable to their interests; and where this is not the result of unlawful acts on the part of the directors or other officers, but of a certain line of policy not inconsistent with law, such shareholders should endeavor to change the board of directors at the next annual election; but, failing in this, there appears to be no remedy for such minority shareholders but to dispose of their shares to the best advantage possible if they are unwilling longer to be connected with the bank.

CHAPTER VI.

VARIOUS FORMS.

Form of Articles of Association.

For the purpose of organizing an association to carry on the business of banking, under the laws of the United States, the undersigned subscribers for the stock of the association hereinafter named do enter into the following articles of association:

First. The name and title of this association shall be "The ————.

Second. The place where its banking-house or office shall be located, and its operations of discount and deposit carried on, and its general business conducted, shall be ————.

Third. The board of directors shall consist of ———— shareholders. The first meeting of the shareholders for the election of directors shall be held at ———— on the ————, or at such other place and time as a majority of the undersigned shareholders may direct.

Fourth. The regular annual meetings of the shareholders for the election of directors shall be held at the banking-house of this association on the second Tuesday of January of each year; but if no election shall be held on that day, it may be held on any other day, according to the provisions of section 5149 of the Revised Statutes; and all elections shall be held according to such regulations as may be prescribed by the board of directors, not inconsistent with the provisions of the National Banking Law, and of these articles.

Fifth. The capital stock of this association shall be ——— thousand dollars, to be divided into shares of one hundred dollars each; but the capital may be increased at any time by shareholders owning two-thirds of the stock, according to the provisions of the act of May 1, 1886; and in case of the increase of the capital of the association, each shareholder shall have the privilege of subscribing for such numbers of shares of the proposed increase of the capital stock as he may be entitled to according to the number of shares owned by him before the stock is increased.

Sixth. The board of directors, a majority of whom shall be a quorum to do business, shall elect one of their number to be president of this association, who shall hold his office (unless he shall be disqualified, or be sooner removed by a two-thirds' vote of all the members of the board) for the term for which he was elected a director; and they shall have power to elect a vice-president, who shall also be a member of the board of directors, and who shall be authorized, in the absence or inability of the president from any cause, to perform all acts and duties pertaining to the office of president except such as the president only is authorized by law to perform, and to elect or appoint a cashier, and such other officers and clerks as may be required to transact the business of the association; to fix the salaries to be paid to them, and continue them in office, or to dismiss them, as, in the opinion of a majority of the board, the interests of the association may demand.

They shall also have power to define the duties of the officers and clerks of the association, to require bonds from them and to fix the penalty thereof; to regulate the manner in which elections of directors shall be held, and to appoint judges of the elections; and, generally, to do and perform all the acts that it may be legal for a board of directors to do under the Revised Statutes aforesaid; and they shall also have the power to make all by-laws that it may be proper and convenient for

• them to make, not inconsistent with law, for the general regulation of the business of the association and the management and administration of its affairs.

Seventh. This association shall continue for the period of twenty years from the date of the execution of its organization certificate, unless sooner placed in voluntary liquidation by the act of its shareholders owning at least two-thirds of its stock, or otherwise dissolved by authority of law.

Eighth. These articles of association may be changed or amended at any time by shareholders owning a majority of the stock of the association, in any manner not inconsistent with law; and the board of directors, or any three shareholders, may call a meeting of the shareholders for this or any other purpose, not inconsistent with law, by publishing notice thereof for thirty days in a newspaper published in the town, city, or county where the bank is located, or by mailing to each shareholder notice in writing thirty days before the time fixed for the meeting.

IN WITNESS WHEREOF, we have hereunto set our hands, this — day of —, eighteen hundred and ninety—.

I CERTIFY that the articles of association of The — — were executed in duplicate, and that one of the instruments so executed is the foregoing; and that the other, in all respects like the foregoing, is on file with said bank.

— —, 18—.

— —,
Cashier or President.

Form of Organization Certificate.

We, the undersigned, whose names are specified in article fourth of this certificate, having associated ourselves for the purpose of organizing an association for carrying on the business of banking, under the laws of the United States, do make and execute the following organization certificate:

First. The name of the association shall be the ———.

Second. The said association shall be located in the ——— of ———, county of ——— and State of ———, where its operations of discount and deposit are to be carried on.

Third. The capital stock of this association shall be ——— dollars (\$——), and the same shall be divided into ——— shares of one hundred dollars each.

Fourth. The name and residence of each of the shareholders of this association, with the number of shares held by each, are as follows:

Name.	Residence.	No. of Shares.

Fifth. This certificate is made in order that we may avail ourselves of the advantages of the aforesaid laws of the United States.

In witness whereof we have hereunto set our hands this ——— day of ———, 18——.

_____.

STATE OF ———,

County of ———, ss:

On this, the ——— day of ———, A. D. 18——, before me, a ——— of ———, personally came ———, to me well known, who severally acknowledged that they executed the foregoing certificate for the purposes therein mentioned.

Witness my hand and seal of office the day and year aforesaid.

[SEAL OF NOTARY OR COURT.]

_____.

Form of Proxy.

Know all men by these presents, that I ——— do hereby constitute and appoint ——— attorney and

agent for me, and in my name, place, and stead, to vote as my proxy at any and all elections of directors of ——— according to the number of votes I should be entitled to vote if there personally present.

In witness whereof, I have hereunto set my hand and seal this ——— day of ———, one thousand eight hundred and ———.

Sealed and delivered in the presence of—
 _____ }
 _____ }

Form for Power of Attorney.

Know all men by these presents, that I, ———, of ———, hereby constitute and appoint irrevocably ——— my true and lawful attorney for me and in my name and stead to sign all necessary papers in connection with the extension of the corporate existence of the ——— under the act of Congress approved July 12, 1882; and I hereby consent that the ——— article of the articles of association of the ——— be so amended as to read as follows: "This association shall continue until close of business on ———, unless sooner placed in voluntary liquidation by the act of its shareholders, owning at least two-thirds of its stock, or otherwise dissolved by authority of law." Hereby granting unto my said attorney full power and authority to act in and concerning the premises as fully and effectually as I might do if personally present.

In witness whereof, I have hereunto set my hand and seal, this ——— day of ———, in the year one thousand eight hundred and ninety—.

Signed and sealed in presence of—
 _____.

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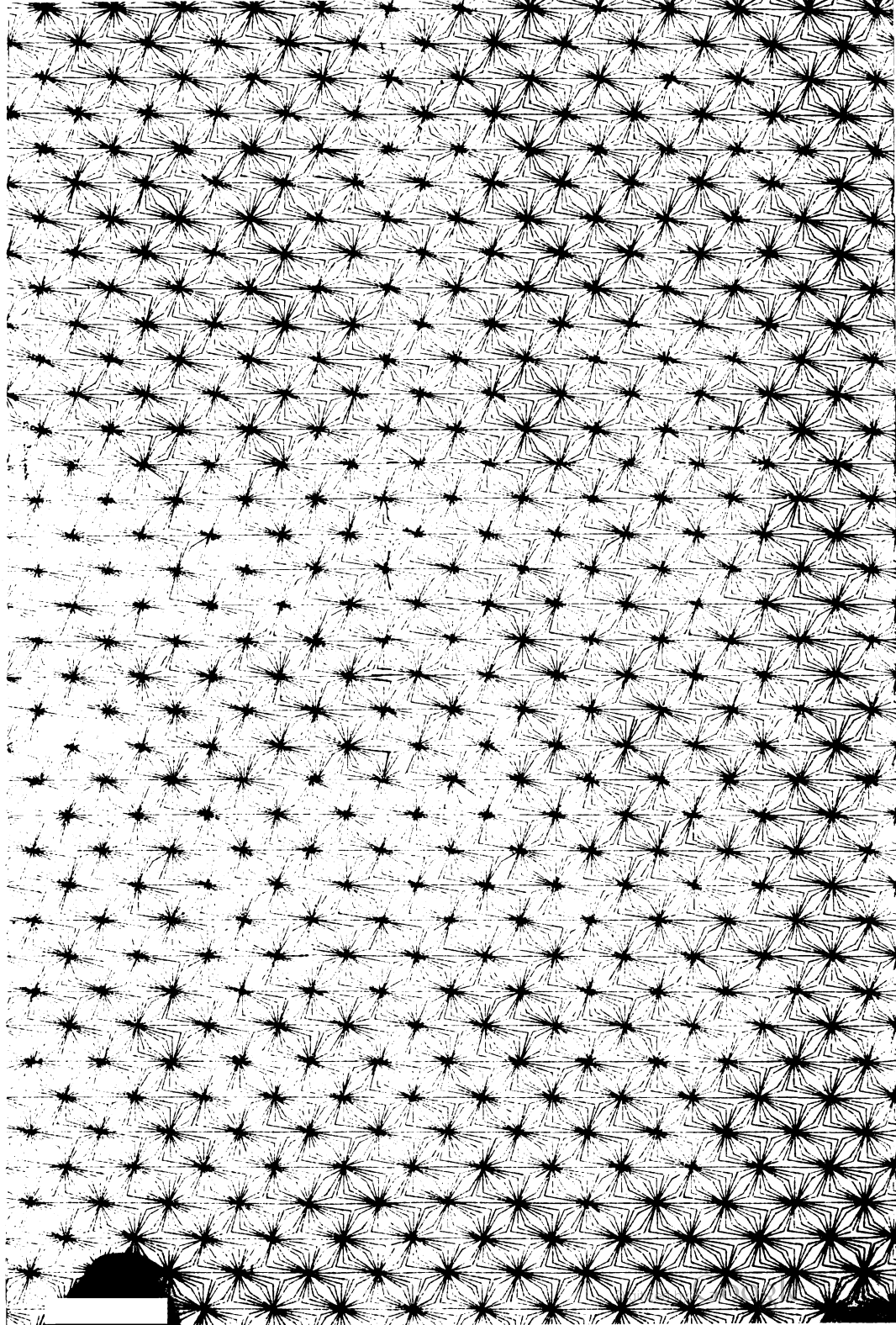
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